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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Neville et al.

Serial No.: 09/810,999

Filed: March 16, 2001

For: "USE OF IMMUNOTOXINS TO INDUCE)
IMMUNE TOLERANCE TO PANCREATIC)
ISLET TRANSPLANTATION")

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Group Art Unit: 1644

Confirmation No. 7991

Examiner: Ewoldt, Gerald R.

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ELECTION UNDER RESTRICTION/ELECTION REQUIREMENT

Commissioner of Patents
Washington, D.C. 20231

NEEDLE & ROSENBERG, P.C
The Candler Building
127 Peachtree Street, N.E.
Atlanta, Georgia 30303-1811

March 6, 2003

Sir:

In response to the restriction/election requirement of February 7, 2003, applicants provisionally elect, with traverse, the species of methods of treating Type 1 diabetes. Claims 1, 2, 4-8, 10, 12, and 13 are readable upon the elected species. Claim 1 is generic in relation to claims 2 and 3. If claim 1 is deemed to be allowable, applicants request consideration of additional species in accordance with 37 C.F.R. § 1.141.

The Examiner has requested that the applicants elect a specific "species." Applicants traverse this election of species requirement for the following reasons. As discussed in the 37 C.F.R. § 1.141(a), an application may claim a reasonable number of species within a claimed

genus as long as at least one genus claim encompassing all of the species is patentable. The Examiner has indicated that a *specific* species of diabetes from a genus of 2 types, must be elected. Applicants assert that this is not an appropriate application of the 37 C.F.R. § 1.141, which is aimed at situations where there are unreasonable numbers of species claimed. The present situation is not a situation where the applicants are claiming a genus of compounds, for example, a set of 1000 different nucleic acid molecules, and also claiming each of the encompassed species separately, which would be an appropriate application of the election of species requirement. Rather, applicants have claimed a method having a defined number of steps, and then claimed a reasonable number of dependent variations on that method - Type 1 or Type 2 diabetes. Applicants are not required in the present application to elect a species when applicants have not claimed an unreasonable number of species.


Furthermore, applicants traverse the restriction requirement for the following reasons. To be valid, a restriction requirement must establish both that (1) the "inventions" are either independent or distinct, and (2) that examination of more than one of the "inventions" would constitute a burden to the Examiner. Applicants note that the restriction/election requirement does not provide sufficient basis to indicate that examination of more than one of the "inventions" would overly burden the Examiner. Type 1 and Type 2 diabetes are closely related pathologies. Both Type 1 and Type 2 diabetes are related to β islet cell dysfunction. Thus the same art must be searched for either Type 1 or Type 2 diabetes. Accordingly, the second requirement for a proper restriction has not been met. Applicants thus respectfully request

reconsideration of the election requirement.

Favorable consideration of claims 1-8, 10, 12, and 13 is requested.

No fee is believed to be due for this response; however, the Commissioner is hereby authorized to charge any additional fees which may be required to Deposit Account No. 14-0629.

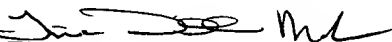
Respectfully submitted,



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Tina Williams McKeon

3/6/03

Date